



KIMBERLY LAMBERT ADAMS
BRIAN H. BARR
MICHAEL C. BIXBY
M. ROBERT BLANCHARD
BRANDON L. BOGLE
W. TROY BOUK
WESLEY A. BOWDEN
VIRGINIA M. BUCHANAN
WILLIAM F. CASH III
JEFF GADDY
REBECCA D. GILLILAND
(LICENSED ONLY IN ALABAMA)

RACHAEL R. GILMER
FREDRIC G. LEVIN
MARTIN H. LEVIN
STEPHEN A. LUONGO
M. JUSTIN LUSKO
NEIL E. McWILLIAMS, JR.
CLAY MITCHELL
PETER J. MOUGEY
DANIEL A. NIGH
TIMOTHY M. O'BRIEN
MIKE PAPANTONIO

CHRISTOPHER G. PAULOS
EMMIE J. PAULOS
A. RENEE PRESTON
ROBERT E. PRICE
MARK J. PROCTOR
TROY A. RAFFERTY
MATTHEW D. SCHULTZ
W. CAMERON STEPHENSON
THOMAS A. TAYLOR
LEO A. THOMAS
BRETT VIGODSKY

OF COUNSEL:
LAURA S. DUNNING
(LICENSED ONLY IN ALABAMA)
BEN W. GORDON, JR.
ARCHIE C. LAMB, JR.
ROBERT M. LOEHR
PAGE A. POERSCHKE
(LICENSED ONLY IN ALABAMA)
LEFFERTS L. MABIE, JR. (1925-1996)
D.L. MIDDLEBROOKS (1926-1997)
DAVID H. LEVIN (1928-2002)
STANLEY B. LEVIN (1938-2009)

March 20, 2018

Via ECF and Hand Delivery

Hon. Matthew F. Kennelly
United States District Judge
United States District Court for the
Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604

Re: *In re Testosterone Replacement Therapy Prods. Liab. Litig.*,
Case No. 1:14-CV-01748, MDL 2545 (N.D. Ill.)
Mitchell v. AbbVie Inc., Case No. 14-cv-09178

Dear Judge Kennelly:

Pursuant to the Court's directive relating to Final Jury Instructions, Plaintiff writes to request the following additional instruction:

Third claim – fraudulent misrepresentation (Proposed Final, p. 16)

Plaintiff requests to add the language of Oregon UCJI 42.11 to the very end of this instruction, following Element No. 5. Specifically, that language is: "If you find that the plaintiff has proved the elements of fraud by clear and convincing evidence, you must next consider the issue of plaintiff's damages. The plaintiff must prove damages by a preponderance of the evidence." Oregon UCJI 42.11 (Fraudulent Misrepresentation—Burden of Persuasion—Damages); and see *Riley Hill Gen. Contr., Inc. v. Tandy Corp.*, 737 P.2d 595, 606 (Or. 1987).

Respectfully Submitted,

/s/ Troy Rafferty

Troy Rafferty